BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6757 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

MANUEL E. GARCIA AND OTHERS
(Claimants-Respondent)
(See Appendix)

S.S.A. No.

GENERAL MOTORS CORPORATION
BUICK-OLDSMOBILE-PONTIAC
(Appellant)

Employer Account No.

PRECEDENT
BENEFIT DECISION
No. P-B-231

FORMERLY
BENEFIT DECISION
No. 6757

The employer appealed from that portion of Referee's Decision No. SF-2925 which held that the claimants herein (see appendix) were not disqualified for benefits under sections 1256 and 1260 of the Unemployment Insurance Code and that the employer's account was not relieved of charges under section 1032 of the code. Written argument was submitted by the employer.

STATEMENT OF FACTS

The claimants last worked, before filing their claims for benefits, at the Fremont, California plant of the employer herein. They were suspended from their work for alleged improper activities in connection with a trade dispute. The testimony given in the consolidated hearing of these matters is in conflict in numerous respects. Having reviewed the entire record and having resolved the conflicts, we make these findings.

(See Appendix)

The employer had operated a plant in Oakland, California at which all of the claimants were employed. The employees of the Oakland plant were members of one of two local unions, depending upon the divisions in which they worked. Both locals were affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America. The relations between the union members and the employer were governed by a collective bargaining agreement effective September 20, 1961.

The employer decided to curtail its operations in Oakland and to transfer the employees thus affected to its plant in Fremont, California. The local unions in Oakland became inoperative and, pending negotiations and the establishment of a local in Fremont, an interim agreement was executed. This interim agreement incorporated by reference the provisions of the international agreement with certain exceptions which are not material to this decision. Remaining in effect were the following provisions of the international agreement:

"STRIKES, STOPPAGES AND LOCKOUTS

"(115) It is the intent of the parties to this Agreement that the procedures herein shall serve as a means for peaceable settlement of all disputes that may arise between them.

"(116) During the life of this Agreement, the Corporation will not lock out any employes until all of the bargaining procedure as outlined in this Agreement has been exhausted and in no case on which the Umpire shall have ruled, and in no other case on which the Umpire is not empowered to rule until after negotiations have continued for at least five days at the third step of the Grievance Procedure. In case a lockout shall occur the Union has the option of canceling the Agreement at any time between the tenth day after the lockout occurs and the date of its settlement.

"(117) During the life of this Agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in or slow-down, in any plant of

the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the bargaining procedure as outlined in this Agreement has been exhausted, and in no case on which the Umpire shall have ruled, and in no other case on which the Umpire is not empowered to rule until after negotiations have continued for at least five days at the third step of the Grievance Procedure and not even then unless authorized by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and written notice of such intention to authorize has been delivered to the Personnel Staff of the Corporation at least five (5) working days prior to such authorization. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises because of any dispute or issue arising out of or based upon the provisions of the Pension Plan, Insurance Program, or Supplemental Unemployment Benefit Plan; nor will the Union authorize such a strike, stoppage, or picketing. In case a strike or stoppage of production shall occur, the Corporation has the option of cancelling the Agreement at any time between the tenth day after the strike occurs and the day of its settlement. The Corporation reserves the right to discipline any employe taking part in any violation of this Section of this Agreement."

The transfer of the employees including the claimants, from the Oakland plant to the Fremont plant was completed before June 25, 1963. Claimant's Garcia, Santos and Stolaroff had been union committeemen in the Oakland plant with Santos as committee chairman. They were appointed temporarily to the same positions in the Fremont plant. The remaining claimants were also union members.

Each committeeman was assigned to a separate district in the plant. Each performed the work to which he was assigned for a relatively brief period of the workday. During the remainder of the day each committeeman consulted with various employees in their districts and the employer's labor relations officials regarding grievances. A representative of the international union was available to assist the committeeman when requested.

During the months preceding June 25, 1963, the production workers in the Fremont plant had registered numerous and varied complaints with the committeemen. The workers became increasingly dissatisfied with management and the committeemen because they believed that there was undue delay in settling the complaints. There were periodic rumors that the production workers would strike. The committeemen, who were devoted union officials, were concerned about the precariousness of their positions as union officials since the workers appeared to have lost confidence in them; they were also concerned about the strained relations between the workers and supervision. Although the workers were dissatisfied with the committeemen, no organized opposition to them existed.

On June 24, 1963, Mr. Santos observed what he considered the "manhandling" of a production worker by members of the employers security force. Mr. Santos became incensed and stated that, if this practice was not discontinued, he would lead the workers out on a strike.

On June 25, 1963, the employer's labor relations officials were informed by immediate supervisors of the workers that the men were talking about "walking out" at 10 a.m. on that date. After a conference among supervision, a meeting was held between the employer's labor relations officials and committeemen Santos and Stolaroff commencing at 9:50 a.m. Committeeman Garcia was not present because he could not be reached in time.

During the meeting the committeemen denied that they were aware of an impending "walkout"; and agreed that such action would be in violation of the collective bargaining agreement. They were reminded that it was

their duty to prevent such a walkout; and Mr. Santos stated that he knew what his duties were and that he did not have to be reminded of them. An employer's representative mentioned that certain rulings by umpires, who had considered the effect of the "no strike" provision of the collective bargaining agreement, held that union committeemen were obligated to take affirmative action to prevent improper "walkouts." Mr. Santos countered with the remark that there were other rulings which held that committeemen were not required to take any action which would subject them to physical danger.

At about two minutes before 10 a.m. Mr. Santos and Mr. Stolaroff were ordered, by the labor relations officials, to approach the workers and attempt to prevent a "walkout." Promptly at 10 a.m., the production workers left their work stations and proceeded from the plant. The two committeemen delayed, until 10:12 a.m., any attempt to speak to the departing workers on the ground that they might be physically harmed. They were offered the protection of the security guards and the labor relations manager offered to go with them. They refused the offered assistance because they did not wish to be identified with management. The committeemen had received no threats of physical harm.

By 10:12 a.m., most of the approximately 900 production workers employed at the plant had departed. Mr. Santos and Mr. Stolaroff spoke to some of the few remaining workers. At this time they were joined by Mr. Garcia. Some of the workers, to whom they spoke, returned to their work stations; others did not. Mr. Garcia was heard to say to one group that the "walkout" was "illegal" and that they could make up their own minds about returning to work or leaving.

None of the committeemen left the plant except when given permission at 10:30 a.m. to attend a union meeting for the expressed purpose of attempting to persuade the workers to return. When they arrived at the union hall, they found about 500 workers there. The workers resisted their attempts to speak and to persuade them to return to work. Finally, it was decided that the workers would return to work the next day.

Claimant Gallegos reported to work at the usual time on June 25, 1963. At 10 a.m. he raised his hands above his head and shouted, "Let's go." He and the other workers in his section then left the plant.

Mr. Perez and Mr. Gomes left their work at 10 a.m. on June 25, 1963. They proceeded from the building. At about 3:30 to 4 p.m. they stationed themselves at an entrance to the employer's premises and intercepted some automobiles containing men who worked on the second shift. Some of the men to whom they spoke turned away and did not report for work.

All of the employees returned to work on June 26, 1963. The employer suspended the claimants for 30 to 60 days on the ground that they had taken active parts in leading and furthering the "walkout."

The claimants filed claims for benefits effective June 30, 1963. In Mr. Garcia's case, the employer within the proper time submitted information relating to the claimant's suspension. The department issued a notice of determination of eligibility favorable to the claimant but did not issue a separate notice of ruling under section 1030 of the code. In the case of Mr. Gallegos, the record does not show that the employer responded to the notice of claim filed. The department issued a notice of determination of eligibility disqualifying the claimant for benefits for five weeks under sections 1256 and 1260 of the code. However, the department did not issue a separate notice of ruling under section 1030 of the code. In the remaining cases herein, the department disqualified the claimants for benefits under sections 1256 and 1260 of the code and issued separate rulings relieving the employer's account under section 1032 of the code. Timely appeals were filed in all instances.

REASONS FOR DECISION

The primary issue before us is whether the claimants voluntarily left their work without good cause or were discharged for misconduct connected with their work within the meaning of sections 1256 and 1030(a) of the Unemployment Insurance Code. Before we may decide the above, we must determine whether there was a trade dispute; whether the claimants left their work because

of a trade dispute; whether, by some act or failure to act, they violated provisions of the collective bargaining agreement; and whether the disqualifying provisions of section 1256 of the code are applicable if the claimants left their work because of a trade dispute. Whether the claimants were ineligible for benefits under section 1262 of the code is not in issue since they did not file claims for benefits while they remained out of work because of a trade dispute.

Section 1262 of the code provides:

> "1262. An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

In Benefit Decision No. 6026, we stated:

> "The term trade dispute is a broad one and may be properly applied to any controversy which is reasonably related to employment and to the purposes of collective bargaining (Benefit Decision No. 5719). It is broader than 'strike' or 'lockout' (Benefit Decision No. 4838), and the existence of a trade dispute is not dependent upon a stoppage of work . . . ."

In the present case, the production workers had registered numerous complaints about their working conditions; and they were dissatisfied also with what they considered the employer's undue delay in correcting these conditions. The controversy related to their employment and to the purposes of collective bargaining. Therefore, a trade dispute existed on June 25, 1963 in the employer's establishment. A stoppage of work occurred on that date when the production workers left their work although there was no physical inability to continue (W. R. Grace & Company v. California Employment Commission (1944), 24 Cal. 2d 720, 151 Pac. 2d 215).

Clearly, therefore, the claimants Gallegos, Perez and Gomes left their work voluntarily because of a trade dispute. We are convinced that such leaving and their other actions in furtherance of the strike amounted to violations of section 117 of the collective bargaining agreement herein.

In reaching this conclusion, we are mindful of the court's injunction in the Grace decision, above, that we have no authority to evaluate the merits of the controversy between the employer and its employees. We have not done so; we have merely decided that a strkke occurred and that the claimants Gallegos, Perez and Gomes breached the collective bargaining agreement by their actions in relation to the strike itself. The claimants have not disputed the fact that section 117 of the agreement was breached. The question remaining is whether these actions and the resulting suspensions require the disqualification of claimants Gallegos, Perez and Gomes for benefits under sections 1256 and 1260 of the code and the relief of the employer's account from charges under section 1032 of the code in relation to their claims.

Section 1256 of the code provides for the disqualification of a claimant for benefits if he voluntarily left his most recent work without good cause or was discharged for misconduct connected with such work. Section 1032 of the code provides that the employer's account may be relieved of charges under such circumstances.

In the Grace case, above, the court held that the disqualification imposed by section 58(a) of the Unemployment Insurance Act (now section 1256 of the code) is not applicable to a claimant subject to the disqualification imposed by section 56(a) (now section 1262 of the code). However, there is one material distinguishing factor in this case which was not present in the Grace case. The court was not confronted with the so-called "no strike" clause and its effect upon the claimants in regard to the imposition of the disqualification under section 58(a) of the act. The same distinction applies to Benefit Decisions Nos. 6703 and 6732 and the decisions cited therein. In those decisions we were not confronted with a "no strike" clause in a collective bargaining agreement and our conclusions therein are not controlling in the situation now before us. Our research has disclosed no California court decisions in which the present situation was considered.

In Benefit Decision No. 5528, the General Motors Corporation discharged certain employees on the ground that they had left their work because of a trade dispute contrary to the direct orders of supervision and to the provisions of section 117 of the collective bargaining agreement then in effect. The discharges had later been modified to suspensions. Benefit Decision No. 5528, which was issued in 1950, held that the claimants were not subject to disqualification under section 58(a)(2) of the act (now section 1256 of the code) for the reasons expressed in the Grace case; but the benefit decision did not discuss the effect of section 117 of the collective bargaining agreement and is not applicable in the matter now before us. Insofar as it contains any implication contrary to the views here expressed, Benefit Decision No. 5528 is disapproved.

In Benefit Decision No. 6732, the claimants had voted to decertify as bargaining agent the union which had previously acted for them. Less than a year after such election, the claimants became affiliated with another union, and they attempted to negotiate with the employer for recognition of the second union as their authorized bargaining agent. The employer refused and the claimants left their work in an attempt to enforce their demands. There followed charges and countercharges before the National Labor Relations Board and a petition in the federal court to enjoin the strike. These actions were not carried to a conclusion because the parties entered into an approved agreement to the effect that the union would discontinue its strike action. The agreement further provided:

> "Nothing contained in this agreement shall constitute the admission of the commission of any unfair labor practices within the meaning of the (Labor Relations) Act."

The claimants unconditionally applied to the employer for reinstatement but the employer discharged them. The employer contended that the claimants were discharged for misconduct within the meaning of section 1256 of the code on the ground that they had engaged in an illegal act in striking for union recognition. In concluding that the claimants were not subject to disqualification under section 1256 of the code, we pointed out that there had been no official adjudication

that the union committed an unfair labor practice in violation of section 8(b)(7)(B) of the National Labor Relations Act; and that we did not have jurisdiction to make such a finding in a field pre-empted by the federal law.

The situation in the present case is distinguished from that in Benefit Decision No. 6732. In the present case, we are not called upon to determine whether the claimants' acts were in violation of any law. We are required to determine the claimants' eligibility for benefits and the employer's liability for charges in relation to benefits paid. To accomplish this, we must determine whether one or the other of the parties breached their collective bargaining agreement. The claimants have not denied that they did violate the terms of such agreement. For this reason, Benefit Decision No. 6732 is not determinative of the matter now before us.

Our research has disclosed a decision by the Massachusetts Supreme Judicial Court, which is in point. This decision (Howard Brothers Manufacturing Company v. Director of the Division of Employment Security (1955), 33 Mass. 244, 130 N.E. 2d 108) was concerned with the effect of a "no strike" provision in a collective bargaining agreement in relation to the disqualification of claimants under the voluntary leaving of work provisions of the Massachusetts Employment Security Law. The claimants had left their work because of a trade dispute without first resorting to the grievance procedures set forth in the agreement. The court stated:

> ". . . All of the claimants voluntarily left their work by striking in violation of their contract. They could have continued to work on the reduced schedule. If this was unsatisfactory to them they could have sought arbitration according to the contract . . . Since the claimants left their work while substantial work still remained for them to do and in violation of their contract, they left 'without good cause . . . .'"

In Barber, Crouse v. California Employment Stabilization Commission (1954), 130 Cal. App. 2d 7, 278 P. 2d 762, hearing denied by Supreme Court, the court had

under consideration a case wherein the employer and the union representing waterfront employees had established a central hiring hall from which employees were dispatched to any of several employers. In holding that the claimants were ineligible for benefits on the ground that they had left their work because of a trade dispute even though they had not been actively working when the strike commenced, the court stated:

> "By these agreements, it is apparent that the employees had bargained away their right to negotiate for employment with any particular employer, and the employer had, for all practical purposes, bargained away his right to negotiate in reference to employment with particular employees. Under this hiring hall system, except in minor particulars not here relevant, each registered member of the union had a contract right to his proportion of the work available."

In effect, the claimants in the Barber case had lost certain rights, while gaining others, because of the agreement. They would not have been held ineligible under section 1262 of the code since they would have been on layoff status but for the agreement (Benefit Decision No. 5800).

Similarly, in this case the employer bargained away its right to "lock out" the employees and the employees bargained away their right to strike until the grievance procedures provided in the contract had reached a specified stage. The employees bargained away their immediate right to strike in order to obtain the security of continued employment while grievances were settled peaceably. They could have continued to work while the grievances which had arisen could thus be settled. They are therefore not entitled to the protection of the principle stated in the Grace decision relative to the applicability of section 1256 of the code.

When the claimants returned to work on June 26, 1963, they ceased to be unemployed because a trade dispute was in active progress. Their subsequent unemployment resulted from the act of the employer in suspending them. Such action by the employer was made for

disciplinary reasons under the provisions of section 117 of the collective bargaining agreement. It was a result which the claimants knew or could reasonably be expected to know might flow from their violation of the agreement's "no strike" clause. In these circumstances, it must be held that it was the deliberate violation of the collective bargaining agreement by the claimants which led to their suspension and thus was the proximate cause of their unemployment at the time their claims were filed.

In Benefit Decision No. 6618, we held that the claimant therein had voluntarily left his work without good cause when he was suspended from his work because of his deliberate violation of the rules of employment on the waterfront, which rules were established in accordance with the collective bargaining agreement there in effect. Since the claimants Gallegos, Perez and Gomes were suspended because of their deliberate violation of the collective bargaining agreement, we reach the same conclusion in their cases.

However, we cannot conclude on the basis of this record that the committeemen (the claimants Garcia, Santos and Stolaroff) violated the provisions of the collective bargaining agreement. They may have known that the other employees intended to leave their work at 10 a.m. on June 25, 1963. However, the evidence does not establish that they did anything to encourage the strikers to leave their work before the "walkout" actually occurred. It is true that they did not make an immediate, affirmative attempt to stop the "walkout" when it commenced. It is also true that they knew that it was their duty to attempt to stop the "walkout" if they could do so without subjecting themselves to physical danger. Since the temper of the strikers was an intangible, the committeemen were entitled to exercise their own judgement about the risk of physical harm which they might encounter in attempting to stop the "walkout." Their hesitation was reasonable under the circumstances. They did not leave their work until permitted to leave by the employer, and then it was for the purpose of persuading the strikers to return to work. The evidence shows that they were sincere in in their efforts to accomplish this. We conclude that the suspension of claimants Garcia, Santos and Stolaroff did not constitute a voluntary leaving of work without good cause within the meaning of sections 1030 and 1256 of the code.

With respect to the claim of Mr. Garcia, the employer submitted timely information and the department issued a determination of eligibility but not a separate ruling under section 1030 of the code. The determination of eligibility, issued under code section 1328, had the same effect as a separate ruling (Ruling Decision No. 145).

In regard to the claim of Mr. Gallegos, the record does not show whether the employer submitted timely information as provided in section 1030(a) of the code. Therefore, we are unable to determine whether the employer is entitled to a ruling under section 1030(c) of the code. The department should investigate this situation and take appropriate action.

DECISION

The decision of the referee is modified. The claimants Gallegos, Perez and Gomes are disqualified for benefits under code sections 1256 and 1260. The employer's account is relieved of charges under section 1032 of the code in relation to the claims of claimants Perez and Gomes. The department shall investigate the employer's entitlement to a ruling in the claim of Mr. Gallegos and take other appropriate action therein. Benefits are payable to claimants Garcia, Santos and Stolaroff; the employer's account is not relieved of charges with respect to their claims.

Sacramento, California, October 22, 1964.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT (Absent)

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6757 is hereby designated as Precedent Decision No. P-B-231.

Sacramento, California, February 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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